**IN THE HIGH COURT OF GUJARAT AT AHMEDABAD**

**SPECIAL CIVIL APPLICATION No. 4267 of 1991**

**For Approval and Signature:**

**HONOURABLE MR.JUSTICE R.S.GARG**

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1 Whether Reporters of Local Papers may be allowed to see the judgment ?

2 To be referred to the Reporter or not ?

3 Whether their Lordships wish to see the fair copy of the judgment ?

4 Whether this case involves a substantial question of law as to the interpretation of the constitution of India, 1950 or any order made thereunder ?

5 Whether it is to be circulated to the civil judge ?

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**GANGABA WD/O. HIMATSING H. THAKORE & 4 - Petitioner(s)**
**Versus**
**STATE OF GUJARAT & 9 - Respondent(s)**

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**Appearance :**

MR JITENDRA M PATEL for Petitioner(s) : 1 - 5.
MR ND GOHIL, AGP for Respondent(s) : 1,
SERVED BY AFFIX.(N) for Respondent(s) : 2, 4, 9,
RULE SERVED for Respondent(s) : 3,5 - 8, 10,

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**CORAM : HONOURABLE MR.JUSTICE R.S.GARG**

**Date : 09/11/2006**

**ORAL JUDGMENT**

1. By this petition under Article 227 of the Constitution, the petitioners seek to challenge

the order of the Mamlatdar, passed on 27.6.65, order of the Deputy Collector, dated 30.10.85 and the order passed by the Gujarat Revenue Tribunal on 8.7.88 [Annexure:C].

2. Short facts of the case are that, the Gujarat Agricultural Lands Ceiling Act, 1960 came into effect in the year 1961, particular limits of ceiling were fixed. In the present matter, almost about 83.28 Acres of land belonged to one Thakor Himatsing Harising, husband of the petitioner no.1 and father of the petitioners no. 2 to 5. On 1.4.76, certain provisions of the Act were amended and the ceiling limit to hold the property was reduced from 72 Acres to 54 Acres in favour of the holder. Thakor Himatsing Harising died somewhere in the year 1975. Thereafter, the petitioners had filed their return so also their objections. It was submitted that out of the total area of 83.28 Acres, 16.22 Acres was given by Thakor Himatsing Harising to his daughter Antarba at the time of her marriage and entry to that effect was made on 1.6.72. It was further submitted that 8.26

Acres of survey no. 292 was given to one Patel Hema in 1954 under a mortgage. It was also submitted that 7 Acres of survey no. 125 was given by the deceased to one Maganpuri on tenancy rights somewhere in the year 1956 and in view of the tenancy laws that Maganpuri would be deemed to be a purchaser. It was accordingly submitted that the land above-referred could not be included in the land belonging to the petitioners and after the said land is deducted from the total recorded holdings of the petitioners, they would be well within the limits of 54 Acres. It was further submitted that effect of Section 6[3]B] of the Act ought to have been extended in favour of the petitioners, because, on the date of the enforcement of the original Act, family consisted of six persons.

3. The Mamlatdar, Deputy Collector and the Revenue Tribunal, all have held against the interest of the petitioners, therefore, they are before this Court.

4. Shri J.M. Patel, learned counsel for the

petitioners submits that the Tribunal and the subordinate revenue authorities were unjustified in not appreciating the facts in their true perspective and were also unjustified in not deleting the above detailed land from the total recorded holdings of the petitioners.

5. After hearing the parties, I am of the opinion that the land admeasuring 16.22 Acres, which is alleged to be given to the petitioner Antarba cannot be taken to be true. Entry in the revenue record shows that after partition, 16.22 Acres of land was given by Thakor Himatsing Harising in Dahej [dowry] to the daughter. Undisputedly, if the property was ancestral property, then, during lifetime of the father, in light of the unmandated Act, daughter had no right to seek any partition. If she could not seek partition, then, no partition could be effected between the father and the daughter, because, principle of partition applies to the persons who have existing right in the property. If we take up the case of dowry, then, dowry is a gift by parents or other

relations and friends at the time of the marriage of a man or a woman. Even to such gift, provisions of Section 17 read with Section 49 of the Indian Registration Act would apply if the property happens to be tangible immovable property worth more than Rs. 100/-. In the present case, the property appears to be worth much more, there is no document expressing intention of the donor in favour of the donee that particular property was given in gift. In absence of a valid gift or a document evincing the gift, basic requirement of attestation also would not be satisfied.

6. Theory of dowry and partition relating to 16.22 Acres of land appears to be a concocted story.

7. So far as 8.16 Acres of land of survey no. 292 is concerned, the petitioners have filed document Annexure:D to convince the Court that this relates to mortgage of land forming part of survey no. 292. Unfortunately, Annexure:D relates to survey no. 354. If that be so, second claim also goes.

8. It was then submitted that 7 Acres of land of

survey no. 125 was given to Maganpuri under the tenancy rights and as he would be deemed to be the purchaser under the tenancy law, at least that part of the land is to be reduced. Barring oral assertion, neither any revenue entry nor any document has been produced to convince the Court that the transaction, in fact, took place. Therefore, the third claim of exemption also goes.

9. So far as the benefit of Section 6[3][B] is concerned, it can be rejected outright, because, on 1.4.76, when the Ceiling Act amendment came into force, Thakor Himatsing Harising was not in existence, as he had expired in 1975. The petitioners in all 5 in number were the only holders.

10. In the considered opinion of this Court, the Tribunal and the subordinate revenue authorities were right and justified in holding that the family of the petitioner would be entitled to hold 54 Acres of land.

11. The petition deserves to and is accordingly dismissed. Rule is discharged. No costs. Interim

relief is vacated.

**[R.S. GARG, J.]**

**pirzada/-**